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**OFFICE OF PETITIONS**

In re Application of  
Donald R. Youell, Jr.  
Application No. 09/865,229  
Filed: May 25, 2001  
Attorney Docket No. ACP 2-021

**DECISION ON PETITION**

This is a decision on the renewed petition under the unavoidable provisions of 37 CFR 1.137(a), filed September 2, 2008, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

This application became abandoned for a failure to take appropriate action in a timely manner after the decision by the Board of Patent Appeals and Interferences mailed of August 10, 2007. On April 14, 2008, a petition to revive under the provisions of 37 CFR 1.137(a) or, alternatively, under the provisions of 37 CFR 1.137(b) was filed. Each petition was dismissed in a decision mailed August 1, 2008.

On September 2, 2008, the present petition was filed, along with a request for a divisional application under 37 CFR 1.53(b), Application No. 12/313,281. Petitioner renews the petition to revive under 37 CFR 1.137(a) or 1.137(b) in favor of the continuing application. Petitioner restates his argument regarding non-receipt of the office action; however, the showing of record does not support a conclusion that the Office action was not received or that the delay in filing a reply was unavoidable. While petitioner alternatively request revival under the provision of 37 CFR 1.137(b), there is no statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional," in compliance with 37 CFR 1.137(b)(3).

Accordingly, the petition under 37 CFR 1.137(b) must also be **DISMISSED**.

Any further petition to revive under the provisions of 37 CFR 1.137(b) must be submitted within TWO (2) MONTHS from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b) and include the

omitted statement. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions

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<sup>1</sup> [www.uspto.gov/ebs/efs\\_help.html](http://www.uspto.gov/ebs/efs_help.html) (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)